

### **REMARKS**

Claims 1 and 31 are amended to further clarify the subject matter. Support for these amendments can be found at least in the specification at ¶ [0021].

New claims 36-39 are added. Support for new claim 36 can be found at least in the specification at ¶ [0018], which states that the filter layer can be titanium, chromium, tantalum nitride, or aluminum, all of which are metallic materials. Support for new claim 37 can be found at least in the specification at ¶¶ [0019] and [0020], which states that the catalyst can be platinum, manganese dioxide, or iridium oxide, all of which are metallic materials. Support for new claims 38 and 39 can be found at least in the specification at ¶ [0022].

### **REJECTIONS UNDER § 102**

The Office Action rejects independent claim 1 and various claims that depend therefrom under § 102(e) as being anticipated by US 2004/0039438 (“Alt ‘438”). Applicants respectfully request reconsideration.

Independent claim 1 recites a filter layer having “pores of a size in the range of 2 – 50 nm.” As explained in the specification at ¶¶ [0017] and [0021], this size range is typical of meso-porous materials and would filter out red and white blood cells.

The Office Action refers to FIG. 2 in Alt ‘438 as showing an implant body 30 having a surface covered with an intermediate layer 32 that is purported to represent a catalyst, and an outer coating 40, which is purported to represent a filter layer. However, Alt ‘438 does not expressly disclose that outer coating 40 has pores of a size in the range of 2 – 50 nm.

In fact, because Alt ‘438 indicates that outer coating 40 is made by a sputtering process to avoid coating all surfaces of particles 33 (see ¶ [0038]), it would be expected that outer coating 40 has pores of relatively larger size. In any case, there is no indication or even a hint in Alt ‘438 that outer coating 40 has pores in the size range of 2 – 50 nm. Therefore, Alt ‘438 cannot be said to disclose the recited pore size in a manner sufficient to meet the requirements for anticipation.

Furthermore, Alt ‘438 teaches away from outer coating 40 having relatively smaller pore sizes. Alt ‘438 explains that outer coating 40 should “merely cover the more exposed surfaces of particles 33” (emphasis added). *See* ¶ [0038]. As such, Alt ‘438 teaches that a sputter-coating process is “more desirable than a process that would include immersion of the stent . . . in a

solution of iridium where more extensive surface coverage is desired" (emphasis added). See ¶ [0038]. Thus, Alt '438 teaches away from outer coating 40 having smaller pore sizes, such as in the 2 – 50 nm range. Instead, Alt '438 teaches that outer coating 40 should only cover the more exposed surfaces of particles 33 and leave open the spaces between particles 33. Alt '438 lacks any suggestion that outer coating 40 should have pores in a size range of 2 – 50 nm.

For at least these reasons, Applicants respectfully submit that claim 1, and the claims that depend therefrom, are neither anticipated by nor obvious in view of Alt '438. Accordingly, withdrawal of the rejection is respectfully requested.

### REJECTIONS UNDER § 103

#### [A]. Alt '438 / Alt '607 / Smalley

The Office Action rejects claims 4, 5, and 25 under § 103(a) as being unpatentable over Alt '438. The Office Action also rejects claim 10 under § 103(a) as being unpatentable over Alt '438 in view of U.S. Patent No. 6,217,607 ("Alt '607"). The Office Action also rejects claims 21, 22, 28, and 29 under § 103(a) as being unpatentable over Alt '438 in view of US 2002/0085968 ("Smalley"). Applicants respectfully request reconsideration.

All of the above-rejected claims depend from claim 1. Each of the above rejections relies on Alt '438 purportedly disclosing the invention of claim 1, and the rejections suggest ways in which the Alt '438 stent could be modified to meet the selected dependent claims. However, as explained above, Alt '438 does not disclose the invention of claim 1 in a manner sufficient to meet the requirements for anticipation. Thus, even if the Alt '438 stent could be modified in the manner suggested by the Office Action, the Alt '438 stent as modified would still not meet the claimed invention.

For at least these reasons, Applicants submit that the above-rejected claims are patentable over Alt '438 alone, or Alt '438 in view of Alt '607, or Alt '438 in view of Smalley. Accordingly, withdrawal of the rejections is respectfully requested.

[B]. Trozera in view of Alt '438

The Office Action rejects claims 31-33 under § 103(a) as being unpatentable over U.S. Patent No. 6,475,233 ("Trozera") in view of Alt '438. Applicants respectfully request reconsideration.

Independent claim 31 recites a filter layer having "pores of a size in the range of 2 – 50 nm."

This rejection relies on Alt '438 for its purported disclosure of a filter layer. However, as explained above, Alt '438 does not disclose a filter layer having "pores of a size in the range of 2 – 50 nm" in a manner sufficient to meet the requirements for anticipation. Thus, even if Alt '438 could properly be combined with Trozera in the manner suggested by the Office Action, this combination would still fail to meet the invention of claim 31.

For at least these reasons, Applicants respectfully submit that claims 31-33 are patentable over Trozera in view of Alt '438. Accordingly, withdrawal of the rejection is respectfully requested.

### CONCLUSION

Applicants respectfully submit that the present application is in condition for allowance. The Examiner is invited to contact Applicants' representative to discuss any issue that would expedite allowance of this application.

The Commissioner is authorized to charge all required fees, fees under § 1.17, or all required extension of time fees, or to credit any overpayment to Deposit Account No. 11-0600 (Kenyon & Kenyon LLP).

Respectfully submitted,

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